IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5137 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHABEN KAMLESHKUMAR MODI & 7 - Petitioner(s)

Versus

COLLECTOR (STAMP DUTY ASSESSMENT) & 3 - Respondent(s)

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Appearance :

MR YM THAKKAR for Petitioner(s) : 1 - 8.
RULE SERVED for Respondent(s) : 1 - 2, 4,
RULE UNSERVED for Respondent(s) : 3,
Ms. Archana Raval, AGP for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 08/12/2005

ORAL JUDGMENT

In this petition under Article 226/227 of the Constitution of India, the petitioner has prayed for an appropriate writ, order or direction setting aside the proceedings initiated under Section 32-A(1) of the Bombay Stamp Act [“the Act” for short]vide notice dated 16.6.1995 and all other proceedings and

orders thereof. The petitioner has also prayed for an appropriate writ, order or direction quashing and setting aside the order passed by the Collector, Stamps, dated 23rd July 1997 under Section 32-A of the Act by which the petitioner is directed to pay Rs. 3,08,890/= towards deficit stamp duty with regard to document bearing Registration No. 2138/88 presented before Sub-Registrar, Godhra. The petitioner has also prayed for an appropriate order quashing and setting aside the order of attachment/notice No. 1319 dated 20th January 2005 issued by the Deputy Mamlatdar and Ex-Officio Recovery Officer (Stamp & Registration Fee), Godhra, for recovery of amount as per the order passed by the Collector of Stamps dated 23rd July 1997.

2. Shri YM Thakkar, learned advocate appearing for the petitioner has submitted that the document was submitted before the Sub-Registrar in 1988 and the petitioner was served with the notice on 27th July 1990 issued by the Special Land Acquisition Officer, Panchmahals, Godhra under Rule 4 of the Bombay Land Revenue Rules with regard to the aforesaid property/document in question. It is also the contention on behalf of the petitioner that after the petitioner had submitted reply the proceedings were dropped. He has also further submitted that subsequently one another notice came to be issued by the Deputy Collector, Stamp Duty (Valuation), Nadiad

on 16.6.1995 under Rule 4 of the aforesaid Rules taking the aforesaid document under Section 32-A of the Bombay Stamp Act and thereafter the impugned order came to be passed on 23rd July 1997 by which after considering the submissions made on behalf of the petitioner and accepting the same partly passed the order directing the petitioner to pay the amount of Rs. 3,08,890/= towards deficit stamp duty and Rs. 250/- by way of penalty. It is also the contention on behalf of the petitioner that being aggrieved and dissatisfied with the said order passed by the Collector of Stamps, Nadiad, dated 23rd July 1997 the petitioner preferred appeal before the Chief Revenue Controlling Authority, State of Gujarat, however, nothing was heard by the petitioner from the said authority and all of a sudden the petitioner came to be served with the impugned order of attachment/notice to recover the amount as per the order dated 23rd July 1997. It is the contention on behalf of the petitioner that once proceedings were initiated under Section 32-A of the Act and thereafter the same were dropped it is not open for the authority to either take the aforesaid order under review and/or pass any further order.

3. Ms. Archana Raval, learned AGP appears on behalf of the respondents and an affidavit-in-reply is filed on behalf of the respondents in which it is submitted that as such the petitioner was informed

vide communication dated 27.10.1997 by the Collector of Stamps, Nadiad, directing the petitioner to comply with the said communication and to pay 25 per cent of the deficit stamp duty, Rs. 100 by way of appeal fee, and Rs. 2.50 for court fee stamp. However as the petitioner has not complied with the same the impugned attachment order came to be passed and the petitioner was directed to make payment of the aforesaid amount as per order dated 27.10.1997.

4. At this stage, Shri Thakkar, learned advocate has relied upon the affidavit-in-rejoinder on behalf of the petitioner wherein the service of communication dated 27.10.1997 upon any of the coowners is disputed. He has also further submitted that as such there is no communication from the appellate authority and/or any further communication with regard to dismissal of the appeal submitted by the petitioner on the aforesaid ground.

5. In view of the dispute whether the communication dated 27.10.1997 was served upon the petitioner and/or any of the coowners or not and as such there is no sufficient material on record by which it can be said that the petitioner and/or any other coowner was served upon the communication dated 27.10.1997 and in absence of any further communication from the appellate authority, without entering into the larger question, the appellate

authority, i.e., the Chief Revenue Controlling Authority is required to be directed to decide and dispose of the appeal preferred by the petitioner which is filed against the impugned order passed by the Collector, Stamps, Nadiad, dated 23rd July 1997 on deposit of 12.5 per cent stamp duty in the facts and circumstances of the case with a liberty in favour of the petitioner to raise all contentions which are available to the petitioner in law.

6. For the reasons stated hereinabove, the attachment order/notice dated 20th January 2005 issued under Section 152 of the Bombay Land Revenue Code as well as further notice under Section 200 of the said Code dated 20th January 2005 issued by the Deputy Mamlatdar and Ex-Officio Recovery Officer (Stamp & Registration Fee), Godhra are hereby quashed and set aside. The Chief Revenue Controlling Authority, State of Gujarat, is directed to decide and dispose of the appeal preferred by the petitioner against the order passed by the Collector of Stamps, Nadiad dated 23rd July 1997 in respect of document bearing Registration No. 2138/1988 on deposit of 12.5% of the deficit stamp duty amount to be made good within the period of six weeks from today. It will be open for the petitioner to take all contentions which are available to the petitioner in law. The Chief Revenue Controlling Authority is directed to decide and dispose of the appeal against the aforesaid order

within the period of six months from the date of such deposit i.e., 12.5% of the said amount and subject to complying with other conditions, if any.

7. Rule is made absolute to the aforesaid extent. However, there is no order as to costs. Direct service is permitted.

[M.R. Shah, J.]

RMR.